

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

*In Re:* Berryman Enterprises, Inc. )  
District 7, Map 74H, Group F, Control Map 74H, Parcel 1P ) Haywood County  
Commercial Personal Property )  
Tax year 2005 )

INITIAL DECISION AND ORDER

### Statement of the Case

The subject property is presently valued for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$513,156	\$153.947

On February 22, 2006, Berryman Enterprises, Inc. ("BE") filed an appeal with the State Board of Equalization ("State Board").

The undersigned administrative judge conducted a hearing of this matter on May 11, 2006 in Jackson.<sup>1</sup> BE was represented by its president, Ray Berryman. Haywood County Assessor of Property (“Assessor”) Dare Simpson appeared on her own behalf. Also in attendance at the hearing was James Davis, of the contract auditing firm Tax Management Associates.

### Findings of Fact and Conclusions of Law

**Background.** This appeal stems from a forced assessment on the tangible personal property account that was assigned to a new fast food (Krystal) restaurant in Brownsville. In 2002 and 2003, the original property owner (S S E Inc.) filed the schedules required by Tenn. Code Ann. section 67-5-5903 with the Assessor's office. A subsequent audit of the account picked up some omitted "Group 1" equipment, resulting in relatively modest back assessments/reassessments for those tax years.<sup>2</sup>

In October of 2003, the property at this location was repossessed by the Bank of Alamo, which itself had been placed in receivership under the Federal Deposit Insurance Corporation (FDIC). On November 22, 2004, Mr. Berryman signed a contract to purchase the then-dormant restaurant (including the fixtures therein as well as the underlying land) from the FDIC for \$200,000. The transaction closed on or about February 17, 2005. Although the sale contract

<sup>1</sup>The NOTICE OF HEARING (dated April 10, 2006) advised the parties that they should “*be prepared to address any preliminary issues, including (but not limited to) the question of whether the State Board has jurisdiction in this matter.*”

<sup>2</sup>The Assessor's post-audit appraisals of the subject property for tax years 2002 and 2003 were \$463,047 and \$416,324, respectively.

called for proration of the taxes on the *real* property transferred, the agreement also provided that "Purchaser will be responsible for all ad valorem taxes...that become due as a result of...the transfer of the Property."

Meanwhile, not having received a personal property schedule for tax year 2004 by the March 1, 2004 deadline, the Assessor levied a forced assessment on the subject account that was based on the 2002-2003 audit findings. The subject property was also not duly reported in tax year 2005.<sup>3</sup> Consequently, the Assessor made another forced assessment in the amount shown above. Ms. Simpson's records reflect that notice of this increased assessment, dated May 2, 2005, was mailed to BE at the same address entered on the State Board appeal form (696 Harbor Drive, Lexington, TN 38351).

The 2005 assessment on the subject account was not appealed to the Haywood County Board of Equalization during its regular annual session. According to Mr. Berryman's testimony, he did not realize the actual amount of the assessment until shortly before the March 1, 2006 deadline for payment of the city and county tax bills.<sup>4</sup> He paid those bills under protest.

Apparently in support of his request for a "non-standard" valuation in tax year 2006, Mr. Berryman procured an appraisal of the personal property on the premises at that time by an Oxford, Mississippi firm (Phillip D. Bryant Appraisal Associates). The appraiser estimated the fair market value of such machinery & equipment as of March 1, 2006 to be just \$20,000.

On April 12, 2006, BE sold at public auction all of the property it had acquired from the FDIC the year before. The contract sales price was \$255,000.

**Contentions of the Appellant.** In a post-hearing statement dated May 11, 2006, Mr. Berryman expressed his position as follows:

...I do not deny owing personal property taxes from March 1, 2005 thru Dec. 2005, but I think the amount assessed is extremely too high.<sup>5</sup>

The equipment was used, worned [*sic*], damaged and extremely bad shape. Most pieces were in need of repair or replacement.

I wish we could come to an fair [*sic*] agreement as to the value of the equipment.

**Applicable Law.** Article II, section 28 of the Tennessee Constitution provides that "all property real, personal or mixed shall be subject to taxation" unless exempted by the legislature.

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<sup>3</sup>The Assessor did not, of course, furnish a blank tangible personal property schedule to Mr. Berryman in January, 2005 because he was not the property owner at that time.

<sup>4</sup>Mr. Berryman explained that he had entrusted the handling of BE's financial matters to a CPA. Copies of the 2005 tax bills on the subject property were attached to the appeal form.

<sup>5</sup>Previously, on the appeal form signed and sworn to by Mr. Berryman, it was claimed that the fair market value of the subject property on January 1, 2005 was "\$0.00."

Tenn. Code Ann. section 67-5-903(a) requires all business or professional entities to report annually to the assessor on the prescribed form all tangible personal property owned or leased and used (or held for use) in their business or profession. The assessor is obliged to levy a forced assessment against any taxpayer who fails to return the required schedule by March 1. Tenn. Code Ann. section 67-5-903(c). The validity of a forced assessment (or any other change of assessment) does not depend on whether notice of such assessment is actually received by the taxpayer; rather, Tenn. Code Ann. section 67-5-903(c) merely requires that the assessor mail such notice to the taxpayer's "last known address."

Like other property assessments, a forced assessment of tangible personal property may be appealed to the local and state boards of equalization. Tenn. Code Ann. section 67-5-903(d). Generally, an aggrieved taxpayer must first make complaint to the local board of equalization before appealing an assessment to the State Board. Indeed, Tenn. Code Ann. section 67-5-1401 states that:

If a taxpayer fails, neglects or refuses to appear before the county board of equalization prior to its final adjournment, the assessment as determined by the assessor shall be conclusive against the taxpayer, and such taxpayer shall be required to pay the taxes on such amount....

See also Tenn. Code Ann. section 67-5-1412(b).

However, Tenn. Code Ann. section 67-5-1412(e) provides (in relevant part) that:

If notice of an assessment or classification change...was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. **If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment.** The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made. [Emphasis added.]

**Analysis.** The State Board has generally construed the term "reasonable cause" in Tenn. Code Ann. section 67-5-1412(e) to mean some circumstance beyond the taxpayer's control (such as disability or illness). For example, in the Appeal of ABG Caulking Contractors, Inc. (Davidson County, Tax Year 2004, Final Decision and Order, May 11, 2006), the Assessment Appeals Commission upheld the dismissal of an appeal from a forced assessment which the taxpayer failed to contest before the local board of equalization. The Commission acknowledged that "the tax consequences of his error are severe: the forced assessment for 2004 yields a tax bill of \$22,731.46 versus a likely bill of about \$9,000 had the schedule been

properly filed,” but concluded that “the primary cause of the excessive assessment is neglect by the taxpayer’s agent or employee, which we do not find to be beyond the taxpayer’s control.” *Id.* at p. 2.

Respectfully, in light of this historical precedent, the administrative judge cannot recommend acceptance of this direct appeal. The evidence indicates that the Assessor timely mailed notice of the disputed assessment to BE’s correct address. Further, even if that assessment change notice had *never* been sent, BE obviously did receive the ensuing tax bills that would have been mailed by the Haywood County Trustee and Brownsville City Clerk by the first Monday in October (when the taxes were payable). See Tenn. Code Ann. section 67-1-701. Yet more than four months elapsed before BE filed this appeal with the State Board. Nothing in the record suggests that this delay was attributable to any circumstance beyond the taxpayer’s control.

Moreover, even if this appeal were properly before the State Board, valuation of the subject property could not reliably be predicated on Mr. Bryant’s appraisal because: (a) its effective date (March 1, 2006) was 14 months *after* the assessment date for the tax year under appeal; and (b) the appraiser was not called to testify at the hearing, thus rendering the statements contained in his report *hearsay*. See Appeal of TRW Koyo (Monroe County, Tax Years 1992—1994, Final Decision and Order, January 13, 1995).

### Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26<sup>th</sup> day of May, 2006.

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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Ray Berryman, Berryman Enterprises, Inc.  
Dare Simpson, Haywood County Assessor of Property

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